

NO PROTEST RECEIVED
Release copies to District

Date 3-12-99

Signature [REDACTED]

OP:E:EO:T:2

SEP 16 1998

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. On [REDACTED], you filed for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code. In a letter dated [REDACTED], your authorized representative withdrew that application and submitted your application for recognition of exemption as an organization described in section 501(c)(6). We have determined that you do not qualify for exemption under section 501(c)(6) of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED]. Your Articles of Incorporation state that you shall engage primarily in activities to promote partnering between companies and academia to create high technology jobs in [REDACTED] through the development of [REDACTED].

[REDACTED]. Your bylaws state that your property and business shall be managed by a Board of Directors, consisting of [REDACTED] persons, who shall constitute your sole members.

In your application, you state that you were formed in order to assist in the development of [REDACTED], initiated upon award of a grant from [REDACTED] and you include several industrial and academic partners. You state that your current projects [REDACTED] which will eventually lead to [REDACTED]. You state that your purpose is to stimulate the scientific research and development to promote industry and the creation of jobs in [REDACTED] and that your activity is currently conducted by your individual partners at their places of business. You also state that your source of financial support is a grant from [REDACTED].

_____, which is passed through to your partners and the partners pay an amount back to you to cover the administrative costs.

In your Executive Summary, submitted with your application, you state that your mission is to provide leadership for the partnership arrangements for the development of _____ which sell into specific market niches, and that the initial project, the medical diagnostic market, should provide experience in partnering, in your management, and should generate funding for your sustainability. You state that your goals for the first year will be to establish a Board of Directors, choose an Administrator, set up administrative arrangements such as accounting procedures, and assist in establishing your partnering arrangements. You list _____:

(1) _____, the leading manufacturer of _____ and one of the largest suppliers of high performance _____ instruments;

(2) _____, will manufacture and market _____ instruments;

(3) _____, one of the largest suppliers of _____ and uses _____ as _____; and

(4) _____, a software company creating interfaces between instruments and user interfaces with analytical software.

You also list _____ individuals, _____ who will help develop the algorithms needed for database searches, and _____, who will coordinate the internship program for student training. You state that you will seek to add partners who are developers of "intelligent" software or who have expertise in _____, _____, or other types of analytical equipment.

You state that the first challenge will be for _____ to develop analytical instruments which are specifically adapted to the clinical environment; the software companies must completely automate the analysis, provide validatable answers, and make it simple to use. You state that there are no truly automated systems on the market for performing _____, and that when you are successful in implementing this new technology, the range of diagnostic tests should be in the hundreds for screening. You state that _____

[REDACTED]

[REDACTED] are [REDACTED]

[REDACTED]

You state that the central concept of your organization is the partnering of companies and nonprofit organizations resulting in commercialization of the use of analytical instruments such as [REDACTED], coupled with sophisticated software, for [REDACTED]; you will cause creation of commercial products which are not likely to arise without the partnership efforts you catalyze. You state that your long-term goal is to create a non-profit center which will facilitate development of strong clusters of partners which capitalize on the strengths in [REDACTED]; you should be self sustaining, operate with the guidance of a Board of Directors, and should facilitate formation of strong new partnerships related to your goals. You state that your main short term objective is to stimulate the partnerships in development of the first product to provide for your sustainability. You also state that while each of the partners has specific agenda to be accomplished, the end goal for all is successful commercialization of products which likely would not have been developed without your organization.

Each of the partnered organizations has signed letters indicating that any intellectual property developed by one organization is the property of that organization. The nondeveloping partner of each organization has no rights in such property, but is allowed first right of refusal for nonexclusive or exclusive rights as negotiated between them.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its

individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally. The activities of the organization consisted of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses.

Rev. Rul. 69-106, 1969-1 C.B. 153, holds that a nonprofit manufacturers' organization that conducts research in projects of common interest to their industry and makes the results available only to its members rather than to the industry as a whole does not qualify for exemption under section 501(c)(6) of the Code. The revenue ruling states that although membership in the organization is open to all businesses in the industry on an equal basis, not all the businesses in the industry are members. The revenue ruling concludes that since the organization distributes the results of its research only to its members, its activities are not aimed at the improvement of business conditions for the entire industry.

Rev. Rul. 70-81, 1970-1 C.B. 131, holds that the exempt status of an organization exempt under section 501(c)(6) of the Code is not adversely affected by the development of an industrial park in order to attract new industry to the community. In order to provide suitable facilities to attract new industry, the organization purchased a large tract of land, developed it, and offered appropriate sites to businesses at low prices, sometimes at less than cost, in order to induce them to locate in the community. The revenue ruling concludes that the organization's activities are not of a kind ordinarily carried on for profit and is in furtherance of the organization's purpose of improving the general business conditions of the community.

Rev. Rul. 72-211, 1972-1 C.B. 150, which clarifies Rev. Rul. 56-65, *supra*, holds that an organization formed to promote the interest of its members and persons or firms related to the building and construction industry by providing a plan room and news bulletins available for the entire industry qualifies for exemption under section 501(c)(6) of the Code. The revenue

ruling concludes that providing a news bulletin and plan room available to the entire building and construction industry without charge improves the business conditions of that line of business because it makes information on construction projects freely available to the construction industry as a whole. The revenue ruling stresses that one of the main reasons for exemption is the fact that the organization's facilities are open for use by all individuals and businesses in the industry, nonmembers as well as members.

Rev. Rul. 73-411, 1973-2 C.B. 180, in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the required common business interest is usually the general economic welfare of a community, and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Trade associations or business leagues under section 501(c)(6) are similar to chambers of commerce, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community.

In Glass Container Industry Research Corporation, 70-1 USTC 9214, the Tax Court examined an organization conducting scientific research in the field of glass container production and manufacture. Independent commercial research organizations, colleges, and universities performed the actual research. The contracts for the research almost all provided that the results were not to be disclosed. Members were forbidden to disclose the research reports to nonmembers and the aim of the organization with respect to the reports which were made public was not to disclose information which would be of assistance to a nonmember from a production standpoint. The Court found that because the results of the research were only for the benefit of members, the organization was a cooperative effort on the part of a limited number of persons to research business projects for the benefit of themselves rather than the public at large, or the industry at large, and thus exemption under section 501(c)(6) of the Code was denied. The Court stated that 30% of a group of manufacturers engaged in an industry cannot organize themselves solely for the purpose of investigating and discovering cheaper and better methods of conducting their business with a view to increasing their profits with restrictions on dissemination of the research

results and at the same time be tax-exempt under the statute. The Court found it unnecessary to speculate what the situation might have been in the event the organization relaxed its rules and regulations with regard to dissemination of research results.

Since your efforts are not directed at promoting the common economic interests of all the commercial enterprises in a given trade community, your right to exemption under section 501(c)(6) of the Code, if any, must rest on your characterization as a business league or trade association. The information you have submitted, however, indicates that your membership is limited to [REDACTED] and is not freely entered into by organizations in your area engaged in similar activities. Therefore, we do not consider your membership to be open generally to all individuals or companies in the fields of analytical instrumentation, software creation, or any other related line of businesses in your community, and you are not considered to be a business league or trade association within the meaning of section 501(c)(6), as described in Rev. Rul. 73-411, supra.

It is clear that your membership consists and will consist solely of persons or organizations who will be able to work on specific projects, [REDACTED] with the product or products of such projects being marketed for profit by such organization or person. There is no sharing of any product even between partners. Thus, all the benefits that you provide to your members are obtained by your members at the exclusion of persons or organizations in your area who engage in similar activities but who are not partners. As explained in Rev. Rul. 69-106, and Glass Container Industry Research Corporation, both supra, research that is not shared equally among members and nonmembers is not considered to be an exempt activity under section 501(c)(6) of the Code.

In addition, the activities you are funding through the grant from [REDACTED] are no different than funding research for a profit in the same manner as organizations engaging in a regular business of a kind ordinarily carried on for profit. You have made clear the fact that products produced as the result of your activities must be sold or produce royalties for your continued existence. Such services you provide to your members gives them a convenience or economy in the operation of their own businesses. As stated in Rev. Rul. 68-264, supra, such an activity is defined as a particular service. By primarily performing this activity, you are not directing your efforts to the improvement of business conditions of the entire industry as required under section 1.501(c)(6)-1 of the regulations. You are not similar to the organization described in Rev. Rul. 70-81, supra, because your activity is carried on in the same manner as activities carried on for profit.


Even if all of your activities could be considered to be proper activities for organizations exempt under section 501(c)(6) of the Code, the fact that your services are to be limited to your members and not to one or more lines of business within the meaning of section 501(c)(6) would preclude exemption as explained in Rev. Rul. 56-65, supra, and as clarified by Rev. Rul. 72-211, supra.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service
OP:E:EO:T:2-, Room 6539
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

cc: 





